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Patrice Uchno Leland

Patrice L. Uchno Leland

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/870,428
(Attorney Docket No. GP-301083)

Filed May 30, 2001

Thomas A. Slopsema et al

Group 3747

METHODS AND APPARATUS FOR
CONTROLLING A SHUTDOWN OF AN
INTERNAL COMBUSTION ENGINE

Examiner R. A. Smith
(Fax No. 703-872-9302)

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RESPONSE TO PAPER NO. 5

GROUP 3700

Commissioner for Patents
Washington DC 20231

This is in response to the Office Action mailed May 7, 2002, wherein claims 1-21 were rejection. Claims 1-21 remain pending.

Claim Rejections Under 35 U.S.C. §103

On page 2 of the Office Action, the Examiner rejected Claims 1, 5, 10, 11, 15 and 21 under 35 U.S.C. §103, as being obvious over Bauerle or Tolkacz et al. in view of Cummings. Applicants respectfully disagree with the Examiner. Bauerle discloses an electronic throttle control device to compensate for inclination and altitude, as disclosed in the abstract and column 1, lines 45-61. Tolkacz discloses an electronic throttle control device to compensate for airflow deviations over the life of a vehicle, as disclosed in the abstract and column 2, lines 1-11. Bauerle and Tolkacz are completely silent with respect to an electronic throttle control device to terminate an intake charge of air during the shutdown of an internal combustion engine. Furthermore, while Cummings tangentially discusses the use of a throttle plate to shut an engine down, there is no disclosure of a controller to control a throttle to terminate an

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intake charge of air. Prior art systems of throttles were spring and wire controlled with mechanical stops to determine the closure point of a throttle. It should be noted that Cummings is focused on a diesel engine application which has no relevance to throttle plates. Diesel engines are not regulated by a throttle plate, but rather by the fuel injectors and compression ignition. The intake air manifold of a diesel engine is completely unthrottled while the amount of fuel injected by the fuel injectors controls the speed of a diesel engine. The references singly or in combination do not teach or suggest the present claimed invention, and independent Claims 1 and 11 and their corresponding dependent claims are in condition for allowance.

Applicants assert that it is highly speculative of the Examiner to state that independent Claims 1 and 11 of the present invention are obvious, and such a conclusion is not supported by prior art. If the Examiner relies on personal knowledge that the apparatus of the present invention is obvious, applicants respectfully request support for this assertion in the form of an affidavit that shall be subject to contradiction or explanation by the affidavits of the applicants and other persons under 37 C.F.R. 1.104 (d)(2).

Conclusion

The entire Office Action dated May 7, 2002 has been carefully reviewed, and this response is submitted as being fully responsive thereto. In view of the preceding remarks, applicants respectfully submit that Claims 1-21 are in condition for allowance and respectfully request such action at the Examiner's earliest convenience. If the Examiner believes that personal contact would be advantageous to the disposition of this case, he is requested to call the undersigned at his earliest convenience.

Respectfully submitted,



Christopher DeVries - Attorney

Reg. No. 44,654

Telephone: 313-665-4969

CD:plul

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